

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

JENNIFER MCCANN-HERLIKOFER,

Plaintiff,

v.

No. CIV No. 14-0596 LAM

**CAROLYN W. COLVIN, Acting Commissioner
of the Social Security Administration,**

Defendant.

**ORDER GRANTING MOTION FOR ATTORNEY FEES
UNDER THE EQUAL ACCESS TO JUSTICE ACT**

THIS MATTER is before the Court on the parties' *Stipulation for Attorney's Fees Under the Equal Access to Justice Act and Costs* (Doc. 24) in the amount of \$3,440.09 for attorney fees and \$400.00 in costs, which the Court construes as a motion for attorney fees. Having considered the motion, record in this case, and the relevant law, the Court **FINDS** that the motion is well-taken and will be **GRANTED**.


IT IS THEREFORE ORDERED that the parties' *Stipulation for Attorney's Fees Under the Equal Access to Justice Act and Costs* [Doc. 24] is **GRANTED**, and Plaintiff is authorized to receive **\$3,840.09** for payment to Plaintiff's attorney for services before this Court, as permitted by the Equal Access to Justice Act, 28 U.S.C. § 2412, and in accordance with *Manning v. Astrue*, 510 F.3d 1246, 1255 (10th Cir. 2007).

IT IS FURTHER ORDERED that, if Plaintiff's counsel is ultimately granted attorney fees pursuant to 42 U.S.C. § 406(b) of the Social Security Act, Plaintiff's counsel shall refund the smaller award to Plaintiff pursuant to *Astrue v. Ratliff*, 560 U.S. 586, 596 n.4 (2010) (explaining that, if a claimant's counsel is ultimately granted attorney fees under § 406(b) out of

the claimant's benefit award, the claimant's attorney must refund to the claimant the amount of the smaller fee).

IT IS FURTHER ORDERED that if, after receiving the Court's EAJA fee order, the Commissioner (1) determines upon effectuation of the Court's EAJA fee order that Plaintiff does not owe a debt that is subject to offset under the Treasury Offset Program, and (2) agrees to waive the requirements of the Anti-Assignment Act, the fees will be made payable to Plaintiff's attorney. However, if there is a debt owed under the Treasury Offset Program, the Commissioner cannot agree to waive the requirements of the Anti-Assignment Act, and the remaining EAJA fees after offset will be paid by a check made out to Plaintiff but delivered to Plaintiff's attorney.

IT IS SO ORDERED.


LOURDES A. MARTÍNEZ
UNITED STATES MAGISTRATE JUDGE
Presiding by Consent